

1 HON. JAMAL N. WHITEHEAD
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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 VALVE CORPORATION,

12 Plaintiff,

13 v.

14 LEIGH ROTHSCHILD, ROTHSCHILD
15 BROADCAST DISTRIBUTION SYSTEMS,
16 LLC, DISPLAY TECHNOLOGIES, LLC,
17 PATENT ASSET MANAGEMENT, LLC,
18 MEYLER LEGAL, PLLC, AND SAMUEL
19 MEYLER,
20 Defendants.

Case No. 2:23-cv-1016

STIPULATED PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:
April 22, 2024

Complaint Filed: 07/07/2023

JURY TRIAL DEMANDED

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
 3 produced or otherwise exchanged, including, but not limited to: internal marketing analysis,
 4 product schematics and technical documents, personal identifying information, settlement
 5 negotiations and settlement agreements, licensing negotiations and license agreements, pre-suit
 6 investigations and communications between the parties and counsel, strategic business plans for
 7 licensing campaigns, financial records and profit and loss statements, employee records, marketing
 8 presentations, and all other types of documents that are typically kept confidential and not shared
 9 with the public or third parties in the ordinary course of business.

10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as
 12 defined above), but also (1) any information copied or extracted from confidential material; (2) all
 13 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
 14 conversations, or presentations by parties or their counsel that might reveal confidential material.

15 However, the protections conferred by this agreement do not cover information that is in
 16 the public domain or becomes part of the public domain through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
 19 or produced by another party or by a non-party in connection with this case only for prosecuting,
 20 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
 21 categories of persons and under the conditions described in this agreement. Confidential material
 22 must be stored and maintained by a receiving party at a location and in a secure manner that
 23 ensures that access is limited to the persons authorized under this agreement.

24 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 25 by the court or permitted in writing by the designating party, a receiving party may disclose any
 26 confidential material only to:

27 (a) the receiving party’s counsel of record in this action, as well as employees
 28 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) the court, court personnel, and court reporters and their staff;

(d) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
 3 or non-party that designates information or items for protection under this agreement must take
 4 care to limit any such designation to specific material that qualifies under the appropriate
 5 standards. The designating party must designate for protection only those parts of material,
 6 documents, items, or oral or written communications that qualify, so that other portions of the
 7 material, documents, items, or communications for which protection is not warranted are not
 8 swept unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
 12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
 14 protection do not qualify for protection, the designating party must promptly notify all other
 15 parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 17 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or
 18 ordered, disclosure or discovery material that qualifies for protection under this agreement must be
 19 clearly so designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (e.g., paper or electronic documents and
 21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
 22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
 23 confidential material.

24 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 25 and any participating non-parties must identify on the record, during the deposition or other
 26 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
 27 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
 28 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the

1 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential
 2 information at trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a prominent place on
 4 the exterior of the container or containers in which the information or item is stored the word
 5 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
 6 the producing party, to the extent practicable, shall identify the protected portion(s).

7 5.3 Designation of Source Code Material: To the extent a producing Party believes that
 8 certain Protected Material qualifying to be designated CONFIDENTIAL contains computer source
 9 code the producing Party may designate such Protected Material as “RESTRICTED
 10 CONFIDENTIAL SOURCE CODE.” A document that merely quotes or cites filenames, line
 11 numbers, directory names, module names, class names, parameter names, variable names, function
 12 names, method names, and/or procedure names (e.g., for notetaking or identification purposes)
 13 without reproducing any lines of source code is not a Source Code Document and need not be
 14 designated “RESTRICTED CONFIDENTIAL SOURCE CODE” but should be designated
 15 “CONFIDENTIAL.” For Protected Material designated RESTRICTED CONFIDENTIAL
 16 SOURCE CODE, the following additional restrictions apply:

17 (a) Access to a Party’s Source Code Material shall be provided only on
 18 “standalone” computer(s) (that is, the computer may not be linked to any network, including a
 19 local area network (“LAN”), an intranet or the Internet). The standalone computer(s) may be
 20 connected to (i) a printer, or (ii) a device capable of temporarily storing electronic copies solely
 21 for the limited purposes permitted pursuant to paragraphs 10 (k and l) below. The hardware and
 22 software specifications of the stand-alone computer(s) (e.g., processor speed, RAM, operating
 23 system, and monitor) shall be commensurate with that of computers used by the producing Party
 24 to work with source code in the ordinary course of business. Additionally, the stand-alone
 25 computer(s) may only be located at the offices of the producing Party, the offices of the producing
 26 Party’s outside counsel, or other location mutually agreed upon by the producing Party and the
 27 receiving Party. The Parties agree to cooperate in good faith to determine a mutually acceptable
 28 location for the stand-alone computer(s);

15 (d) The producing Party shall provide the receiving Party with information
16 explaining how to start, log on to, and operate the stand-alone computer(s) in order to access the
17 produced Source Code Material on the stand-alone computer(s). The receiving Party's personnel
18 are prohibited from bringing outside electronic devices, including but not limited to phones,
19 computers, flash drives, cameras, or other hardware into the room with the stand-alone
20 computer(s). The hosting facility for the producing Party shall provide a secure location to store
21 personal electronic devices;

22 (e) The receiving Party's outside counsel and/or expert shall be entitled to take
23 notes relating to the Source Code on a stand alone computer with a current widely used word
24 processing program, for purposes of enabling the receiving Party's outside counsel and/or experts
25 to take notes relating to the Source Code, but may not copy any line of Source Code into the notes;
26 however, function names, variable names, parameter names, and other individual identifiers
27 derived from Source Code, do not, by themselves, constitute a line of Source Code. Any notes
28 relating to the Source Code will be treated as "CONFIDENTIAL." The receiving Party shall be

1 able to copy the notes from the note taking computer onto a recordable device at the end of each
2 day of inspection under the supervision of the producing Party;

3 (f) The Producing Party shall load its Source Code in a text-searchable file
4 format, as it is kept in the ordinary course of business, on the Source Code Computers. The
5 receiving Party may request that the producing Party install licensed software on the Source Code
6 Computers to assist with review of the producing Party's Source Code. Such request shall be
7 subject to the approval of the producing Party, which shall not be unreasonably withheld. To allow
8 the Producing Party reasonable time to prepare the Source Code Computers, the receiving Party
9 must provide the Producing Party the computer medium (e.g., CD, DVD, USB drive, or FTP)
10 containing the requested software tools at least seven (7) days in advance of the inspection. The
11 producing Party will install and confirm installation of said software on the Source Code
12 Computers prior to the date the receiving Party seeks access.

13 (g) Access to Protected Material designated RESTRICTED CONFIDENTIAL
14 SOURCE CODE shall be limited to outside counsel and up to three (3) outside consultants or
15 experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for
16 the purpose of this litigation and approved to access such Protected Materials. A receiving Party
17 may include excerpts of Source Code Material in a pleading, exhibit, expert report, discovery
18 document, deposition transcript, other Court document, provided that the Source Code Documents
19 are appropriately marked under this Order, restricted to those who are entitled to have access to
20 them as specified herein, and, if filed with the Court, filed under seal in accordance with the
21 Court's rules, procedures and orders;

22 (h) To the extent portions of Source Code Material are quoted in a Source Code
23 Document, either (1) the entire Source Code Document will be stamped and treated as
24 RESTRICTED CONFIDENTIAL SOURCE CODE or (2) those pages containing quoted Source
25 Code Material will be separately stamped and treated as RESTRICTED CONFIDENTIAL
26 SOURCE CODE;

1 as necessary to create documents which, pursuant to the Court's rules, procedures and order, must
2 be filed or served electronically;

10 (k) Should such printouts or photocopies be transferred back to electronic
11 media, such media shall be labeled "RESTRICTED CONFIDENTIAL SOURCE CODE" and
12 shall continue to be treated as such;

22 (m) A producing Party's Source Code Material may only be transported by the
23 receiving Party at the direction of a person authorized under paragraph 10(e) above to another
24 person authorized under paragraph 10(e) above, on paper or removable electronic media (e.g., a
25 DVD, CD-ROM, or flash memory "stick") via hand carry, Federal Express or other similarly
26 reliable courier. Source Code Material may not be transported or transmitted electronically over a
27 network of any kind, including a LAN, an intranet, or the Internet. Source Code Material may only
28 be transported electronically for the purpose of Court proceeding(s) or deposition(s) as set forth in

1 paragraph 10(i) above and is at all times subject to the transport restrictions set forth herein. But,
 2 for those purposes only, the Source Code Materials may be loaded onto a stand-alone computer.

3 (n) All copies of any portion of Source Code Material in whatever form shall be
 4 securely destroyed if they are no longer reasonably necessary in these Actions (e.g., extra copies at
 5 the conclusion of deposition). Copies of Source Code Material that are marked as deposition
 6 exhibits shall not be provided to the court reporter or attached to deposition transcripts; rather, the
 7 deposition record will identify the exhibit by its production numbers.

8 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 9 designate qualified information or items does not, standing alone, waive the designating party's
 10 right to secure protection under this agreement for such material. Upon timely correction of a
 11 designation, the receiving party must make reasonable efforts to ensure that the material is treated
 12 in accordance with the provisions of this agreement.

13 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 15 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 21 regarding confidential designations without court involvement. Any motion regarding confidential
 22 designations or for a protective order must include a certification, in the motion or in a declaration
 23 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 24 affected parties in an effort to resolve the dispute without court action. The certification must list
 25 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 26 to-face meeting or a telephone conference.

27 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 28 intervention, the designating party may file and serve a motion to retain confidentiality under

1 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 2 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 3 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 4 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
 5 the material in question as confidential until the court rules on the challenge.

6 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 7 **LITIGATION**

8 If a party is served with a subpoena or a court order issued in other litigation that compels
 9 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 10 must:

11 (a) promptly notify the designating party in writing and include a copy of the subpoena
 12 or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 14 the other litigation that some or all of the material covered by the subpoena or order is subject to
 15 this agreement. Such notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 17 designating party whose confidential material may be affected.

18 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 20 material to any person or in any circumstance not authorized under this agreement, the receiving
 21 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
 22 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
 23 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
 24 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
 25 Bound” that is attached hereto as Exhibit A.

26 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
 27 **MATERIAL**

28 When a producing party gives notice to receiving parties that certain inadvertently

1 produced material is subject to a claim of privilege or other protection, the obligations of the
 2 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
 3 is not intended to modify whatever procedure may be established in an e-discovery order or
 4 agreement that provides for production without prior privilege review. The parties agree to the
 5 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

6 **10. TERMINATION AND RETURN OF DOCUMENTS**

7 Within 60 days after the termination of this action, including all appeals, each receiving
 8 party must return all confidential material to the producing party, including all copies, extracts and
 9 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
 13 work product, even if such materials contain confidential material.

14 The confidentiality obligations imposed by this agreement shall remain in effect until a
 15 designating party agrees otherwise in writing or a court orders otherwise.

16 **11. PROSECUTION BAR**

17 Any person who receives competitively sensitive technical information of another Party or
 18 third party that is designated “RESTRICTED CONFIDENTIAL SOURCE CODE” or designated
 19 “CONFIDENTIAL.” in this Action shall not engage, directly or indirectly, in drafting or
 20 amending patent claims before the U.S. Patent and Trademark Office (“USPTO”) or any foreign
 21 patent office that are directed to cloud based content distribution systems, including, but not
 22 limited to, the use of distributed network server platforms to deliver media content. The
 23 prohibition set forth shall end one year after the conclusion of this Action, including all appeals.
 24 To avoid any doubt, the prohibition set forth does not apply to representation of a party in any
 25 reissue protest, ex parte reexamination, post-grant review, inter partes review, or any other
 26 contested proceeding in the USPTO or any foreign patent office, except to the extent that the
 27 representation includes directly or indirectly drafting or amending patent claims.

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1 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD**

2 DATED: April 22, 2024

Respectfully submitted,

3 By: /s/ Kathleen G. Geyer

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10 Attorneys for Plaintiff
11 VALVE CORPORATION

12 DATED: April 22, 2024

Respectfully submitted,

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24 ASSET MANAGEMENT, LLC, MEYLER
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PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party.

Dated this ____ day of _____, 2024.

HON. JAMAL N. WHITEHEAD
UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on [date] in the
7 case of Valve Corporation v. Rothschild et al, 2:23-cv-01016-JNW (W.D. Wash. July 7, 2023). I
8 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
9 understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this Stipulated Protective Order to any person or entity
12 except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____